IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Rhoads et al

Application No.: 09/476,68...

Filed: December 30, 1999

For: PERSONAL AUDIO APPLIANCE

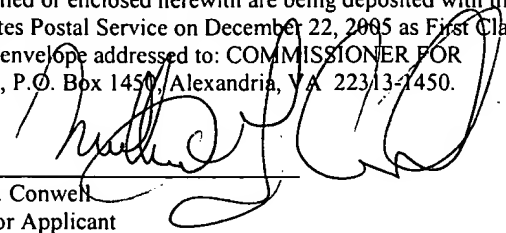Examiner: H. Song

Date: December 22, 2005

Art Unit 2135

Confirmation No. 8157

PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants requests review of the appealed-from rejection in the above-identified application. No amendment is being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheets. (No more than 5 pages are provided.)

Date: December 22, 2005

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Respectfully submitted,
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REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

On appeal, the pending rejections will be reversed. A few reasons for reversal are noted below.

Background

One embodiment of appellants' technology is a pocket-sized device equipped with a microphone to listen to ambient audio (e.g., a song). Signals received by the microphone are passed to a processor. The processor returns a plural-bit identifier derived from the audio signals. This identifier serves as an "audio ID" for the listened-to song.

This "audio ID" is then passed to a remote computer – together with information identifying the user. The remote computer responds by sending back information relating to the sensed song (e.g., song title and artist). This information can be displayed on a screen on the pocket-sized device, or can be put to other uses.

Claims 5-7, 11-17, 25-38 and 40-42 stand rejected as anticipated by, or obvious in view of, Wachi (5,880,386). The other pending claims are objected-to, for dependence on rejected claims.

Wachi relates to a device that can download karaoke songs (and associated information) from a central server. The information is downloaded as a data structure (Fig. 4B) that includes the audio data (i.e., instructions for controlling a tone generator TG, termed "Principal Music Piece Data"), accompanied by various other miscellaneous data (e.g., Song Name, Version ID, Language ID, etc).

Discussion of Rejections

Claims 5, 6, 11-16 and 25-26 are newly rejected as anticipated by Wachi (5,880,386). Wachi does not teach the combinations defined by these claims.

For example, in independent claim 5, Wachi does not teach "discerning *from the audio* a plural-bit audio ID."

The "audio" in Wachi is the data representing the karaoke music (or the analog waveform produced when such data is rendered for presentation to a listener). All of the other

information identified in Figs. 4A and 4B is conveyed *with* the audio, but is not discerned *from* the audio.

Wachi's specification draws this distinction as well, noting that the MUSIC DATA (the "principal music piece data") is <u>accompanied by</u> the miscellaneous data. He writes:

> FIG. 4A shows an exemplary structure of music-piece data set or file (MUSIC DATA(FILE)), which generally comprises a <u>principal music-piece data part</u> (MUSIC DATA) and music-piece-related data part (MUSIC MISC DATA) <u>accompanying</u> the principal part. The principal music-piece data part (MUSIC DATA) is stored in the data bank 13 in compressed form, while the music-piece-related data part (MUSIC MISC DATA) is stored in the data bank 13 in uncompressed form. The principal music-piece data part (MUSIC DATA) includes: data identifying a name of the music piece (SONG NAME); data identifying a version number of the music piece data (VER NO ID); data identifying a language to be used to visually display the words of the music piece where the music-piece data set is directed to karaoke singing (LANGUAGE ID); data indicative of a performance tempo of the music piece (TEMPO); data indicative of a beat of the music piece (BEAT); principal performance event data containing data identifying types and occurrence times of individual performance events in the music piece; and data indicative of an end of the principal music-piece data part (END OF DATA). The principal performance event data part also contains information on a tone generator and tone generating program to be used (TG INFO).[1]

Wachi thus does not discern a plural-bit audio ID <u>from the audio</u>. Instead, he reads the audio ID from miscellaneous data <u>accompanying</u> the audio data in his Fig. 4A data structure.

(The undersigned is unable to find in Wachi's Figs. 1 and 7 any teaching of "transmitting at least portions of both the audio ID and the user ID to a location remote from said device" as alleged in the Action. Fig. 7 shows the host computer examining the user ID, but nothing concerning an "audio ID" is apparent.)

In dependent claim 6, the phrase Digital Object Identifier is capitalized because it has a specific meaning, as shown in Appellants' substitute specification submitted in June, 2001, at page 4, lines 5-6. Wachi does not teach a Digital Object Identifier.

For dependent claim 25, the Action cites text from Wachi's col. 6 (lines 49-65) describing the data structure depicted in his Fig. 4A (including the principal music-piece data

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[1]   Wachi, col. 6, line 49 *et seq* (emphasis added).

part, and the accompanying miscellaneous data). However, this disclosure is not understood to teach the limitation of claim 25.

Likewise, for dependent claim 26: the cited excerpt from Wachi is not understood to teach, responsive to said transmission [of at least portions of both the discerned audio ID and the user ID to a remote location], receipt of data representing a song title, and presentation of such song title on a display.

Regarding independent claim 11, Wachi is not understood to teach various limitations. For example, Wachi does not disclose any tranducer (e.g., a microphone) for receiving ambient audio. Nor does he disclose a processing system operable to detect an identifier of the ambient audio from the electrical signals produced by such a transducer, etc. (Again, col. 6, lines 49-60 are cited from Wachi, but this passage only details the data structure that includes the music data and the accompanying miscellaneous data.)

(Later,[2] the Action admits that Wachi does not disclose receiving audio by a microphone, so it is not understood how Wachi can be said to teach the "transducer to receive ambient audio" required by the anticipation rejection of claim 11.)

Independent claim 15 is said to be rejected over Wachi alone.[3] However, no explanation therefor is offered in the Action.

Nonetheless, to help draw prosecution to a close, the undersigned notes that Wachi does not teach the method of claim 15. For example, he does not teach any audio ID decoded from the audio. Again, as noted earlier, the various IDs cited in Wachi's Fig. 4 and col. 6 is an ID that accompanies the audio data; it is not decoded from the audio.

Claims 7, 17, 27-38, and 40-42 stand rejected under § 103 over Wachi alone. Again, Wachi does not suggest the claimed combinations.

Regarding claim 7, it is agreed that Wachi does not teach any microphone. The Action takes notice that receiving audio by a microphone is well known in the art. However, the utilization of a microphone is not something to which an artisan would be led by Wachi's teachings. Wachi's data structure (Fig. 4) already provides an audio ID; none needs to be discerned from audio sensed by a microphone.

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[2]   August 24, 2005, Action, bottom of page 3.
[3]   August 24, 2005, Action, page 2.

Likewise regarding claim 17.

Independent claim 27 again requires a microphone, the signals from which are transferred to a processor. An identifier derived from these signals is then used to obtain information from a database. Text information – based at least in part on information obtained from the database – is then presented to the user.

Again, an artisan would not be led to such arrangement by Wachi. No identifier derived from microphone-sensed is required by his arrangement; the data structure of 4A already provides the Song Name and other IDs. Nor does Wachi provide any textual information to a user about <u>ambient</u> music.

Dependent claim 32 requires that the textual information presented to the user identify "packaged media" on which the ambient music is available. Contrary to the Action's statement, Wachi's Fig. 4A does not teach such an arrangement.

Dependent claim 40 requires providing to the user one or more internet links that are determined – by reference to the identifier discerned from the ambient audio – to correspond to such ambient audio. Again, none of the Wachi excerpts cited in the Action teaches or suggests such limitation.

Dependent claims 41 and 42 introduce limitations that are not addressed in the Action. (The claims are referenced in a sentence on page 5 of the Action, but that sentence only addresses the limitation of claim 40.) Wachi does not teach or suggest processing electronic signals corresponding to the ambient music, to generate the claimed identifier.

There are other comments and points of distinction that may be made concerning the art, the claims, and the rejections. However, the foregoing points are believed sufficient to establish that the claims are patentable over the art, and that the rejections will be reversed by the Board.